IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6012 OF 2004

Ashabai D. Bachchav. ..Petitioner.
Vs.
Sumanbai T. Gangurde. ..Respondent.

Mr.V.Z. Kankaria for the petitioner.
Mr.P.N.Joshi for the respondent No.1.

CORAM : R.S. MOHITE,J.
DATED : 24.11.2005.

P.C.

1. Rule.

2. By consent of the parties, rule made returnable forthwith.

3. Heard both the parties.

4. The Advocate for the respondent No.1 states that his client has not disputed the genuineness of the will made by Santu in favour of Ashabai and in fact, the will has been admitted and exhibited in the appeal court. Since the amendment to the written statement pertains to the will which has been admitted, the respondents have no objection to the amendment of the written statement. The Advocate for the respondents however, states that since the genuineness of the will has not been disputed

and the will has been admitted and exhibited, there is no case for remanding the matter back for re-recording of the evidence. The attitude taken by the respondents is very fair. In the circumstances, petition is allowed. The impugned order is set aside and the amendment application dated 23.1.2004 filed by the appellant is allowed. It is directed that the matter shall not be remanded back to the trial court and the share of the parties will be decided by the appellate court after taking into account the clauses in the will. Rule made absolute accordingly. Petition stands disposed off.

5. The hearing of the appeal was stayed by this court and hence, the same has been delayed. Hearing of the said appeal is expedited and the same may be disposed off expeditiously and as far as possible in any case before 30.6.2006.

(R. S. MOHITE, J.)